Appendix A

STATUTES INVOLVED

Section 1257(3) of the Judicial Code (28 U. S. C. § 1257(3)) reads in relevant part as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
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> * * *
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> "(3) By writ of certiorari . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

Rule 1019(b) of the Pennsylvania Rules of Civil Procedure provides in relevant part as follows:

> "(b) Averments of fraud or mistake shall be averred with particularity. . . ."

Appendix B

CHRONOLOGICAL SUMMARY OF PRINCIPAL EVENTS PRIOR TO THIS ACTION AND IN THE TRIAL COURT.

THE PRIOR LITIGATION

The litigation between the parties which culminated in the March, 1962 comprehensive settlement agreement was commenced in Switzerland in 1947. It involved actions on four continents: in Argentina, in India, in Denmark, England, Holland, and Switzerland and in three jurisdictions within the United States. The litigation all related to the central issue of who succeeded to the ultimate beneficial ownership of the property of Thomas Bata, the father of respondent and half-brother of Jan A. Bata, who died in 1932 in an aircraft accident in Zlin, Czechoslovakia.

October 23, 1953	The New York Court of Appeals hands down its final decision affirming the judgment of the New York Supreme Court that respondent and his mother are Thomas Bata's heirs and universal successors under Czech law and entitled to his property. (306 N.Y. 96, 115 N.E.2d 672)
November 27, 1957	The Superior Court of Zurich, Switzerland hands down its final decision affirming the judgment of the Zurich District Court that respondent and his mother are Thomas Bata's heirs and universal successors under Czech law and entitled to his property. (Civil Action No. 1435—1947)

August 3, 1960	The Delaware Supreme Court hands down its final decision affirming the judgment of the Delaware Court of Chancery that respondent and his mother are Thomas Bata's heirs and universal successors under Czech law and entitled to his property. (163 A.2d 493)
January 16, 1961	Petitioner files a petition for reargument in the Delaware Supreme Court seeking to have the record of the case reopened to receive what he alleges to be "newly discovered" evidence. (973-1035)
April 25, 1961	The Delaware Supreme Court denies petitioner's petition for reargument and refuses to reopen the record, stating, "The Bata litigation has gone on for thirteen years. The suit in Delaware has lasted seven years. Now, at the last moment, Jan asks us, in effect, to open the door to a retrial of the case on a theory known to him for at least nine years and expressly abandoned in the Delaware litigation." (170 A.2d 711, 716)
May 24, 1961	Petitioner files a petition for certiorari in the United States Supreme Court. (No. 996, Oct. Term 1960)

June 19, 1961 — Petition for certiorari denied. (366 U.S. 964)

November 24, 1961 — Petitioner's present counsel files an affidavit in the pending "accounting" action in New York seeking to avoid the effect of the prior final judgments with a sworn statement that, "In October 1961 affiant obtained evidence which had not been available previously to the defendant [petitioner] and which establishes that the plaintiff [respondent] herein perpetrated a colossal fraud upon the defendant and upon the courts of New York,

* * *

". . . . extensive legal steps . . . are necessary on the part of the defendant to set aside the judgments fraudulently obtained in New York and in Delaware, and to obtain his just rights." (1037-1038)

January 8, 1962 — The trial of the "receivership" action begins before Mr. Justice Greenberg in New York. Both petitioner and respondent testify. The trial is concluded on January 25, and settlement discussions are commenced at once.

March 27, 1962 — AFTER TWO MONTHS OF NEGOTIATION PETITIONER'S PRESENT COUNSEL CONCLUDES ON PETITIONER'S BEHALF THE COMPREHENSIVE SETTLEMENT AGREEMENT WHICH IS COMPLETED IN PHILADELPHIA, PENNSYLVANIA AND SUBSTANTIALLY PERFORMED, INCLUDING AN IMMEDIATE CASH PAYMENT TO PETITIONER OF $2,700,000.

February 18, 1963 — Petitioner's counsel writes to counsel for respondent purporting to "withdraw and nullify" petitioner's consent to certain documents signed by petitioner and his counsel as part of the comprehensive settlement agreement. (554-555)

March 19, 1963 — Petitioner institutes an action in Washington, D. C. seeking to acquire certain assets of the Dutch Bata company in direct violation of his undertaking in the settlement agreement not to commence or take part in any lawsuit concerning the affairs of the Dutch Bata company. ((D.D.C. 1963), aff'd, (D.C. Cir. 1964), cert. denied, 379 U.S. 963 (1965) (No. 586, Oct. Term 1964); 545)

June 13, 1963	Despite the above actions in derogation of the settlement agreement, petitioner voluntarily produces the shares of four Bata companies required to be delivered to respondent as part of the comprehensive settlement agreement and receives for them an additional $200,000 deposited by respondent in escrow on March 27, 1962 pending their delivery. (556-557)
July, 1963	Petitioner continues to refuse to perform the remainder of his obligations under the comprehensive settlement agreement, namely his obligation to cooperate in terminating the action pending in England and to register the bearer shares of the Dutch Bata company. (22-23, 142-143, 268, 418-422, 593; 142, 543-548, 593)

PROCEEDINGS BEFORE THE TRIAL COURT IN THIS ACTION

July 16, 1963	Respondent brings this action seeking to enforce the comprehensive settlement agreement. (8-43)
September 6, 1963	Petitioner, having removed the case to the federal court, files his first answer alleging the settlement agreement as a whole is void on account of "fraud", "duress" and "lack of consideration". Petitioner claims to have "conclusive evidence of fraud" purportedly contained in a document reporting a conference between representatives of the United States government and representatives of the Bata companies in February 1942. (881, 890-918) The document is attached to his pleading.
September 6, 1963	Petitioner files notices to take the depositions of respondent and Alan Rado (respondent's Czech law expert in the prior litigation). (919, 921)
September 26, 1963	Respondent moves to strike petitioner's answer for failure to allege fraud with particularity and because the answer as a whole is sham and interposed for delay. (925-965)

November 4, 1963	The case is remanded to the Court of Common Pleas. (971, 972)
November 12, 1963	Respondent files an application for a protective order to prevent the taking of his and Alan Rado's depositions on the grounds that they testified and were deposed extensively in the prior litigation and that the noticing of the depositions is unnecessary, multifarious, dilatory, repetitious, and in bad faith. (48-55)
November 15, 1963	Petitioner files a petition seeking permission to file a new answer and asking for an extension of time within which to take depositions to aid him in framing a new pleading. (57-61)
December 19, 1963	Oral argument is held before Court of Common Pleas No. 5 *en banc* regarding (1) petitioner's motion to permit him to take depositions and file a new answer; (2) respondent's motion for a protective order; and (3) respondent's motion challenging petitioner's initial answer as sham. At the argument Judge Alessandroni asks petitioner's counsel what basis he has for his claim of "fraud" which would justify the taking of new depositions by petitioner and the filing

of a new answer. Petitioner's counsel points solely to the document reporting the February 1942 conference.

December 1963 to February 1964

The parties submit extensive briefs and massive supplementary materials to acquaint the court with all aspects of the background of the prior litigation (1042-1044) to permit the court to assess the February 1942 document and to determine whether it provides any basis for avoiding the comprehensive settlement agreement. Included among the briefs (totaling 148 pages) and other materials presented to the court are:

Defendant Jan A. Bata's Brief Sur Petition For An Extension of Time to File An Answer;

Plaintiff's Memorandum on Three Motions;

Defendant Jan A. Bata's Brief on Three Motions;

Plaintiff's Supplemental Memorandum together with volumes of additional material (1042):

—Copies of the opinions of the Delaware courts in the prior litigation (1042),

—Copies of the briefs submitted by the parties in the Delaware action (1042),

—A list of the 1,600 exhibits relating to the years 1940-1945 marked in evidence by

the parties in the Delaware action (1043),

—Transcripts of the testimony of respondent and Alan Rado in the actions in Delaware and New York (1043-1044),

—The affidavit of petitioner's present counsel *prior to the settlement agreement* that the Delaware and New York judgments were fraudulently obtained (1036), and

—Correspondence with the U.S. Department of Justice showing that the February 1942 document had been available to petitioner for years upon the asking (1044).

Defendant Jan A. Bata's Supplemental Brief on Three Motions.

Plaintiff's Reply to Defendant's Supplemental Brief.

July 23, 1964 — After consideration of this extensive material filed by the parties, the Trial Court reaches its decision:

(1) a protective order is entered preventing the taking of respondent's and Alan Rado's depositions; (2) petitioner's answer filed in the federal court is held to be "not sufficiently specific"; (3) petitioner is given a second chance to raise a defense to the action by filing a new answer. (68)

September 21, 1964	Petitioner files his second answer containing the same general allegations of "fraud", "duress" and "lack of consideration" as his first. There are virtually no differences between the two pleadings except the document reporting the February 1942 conference is no longer attached and petitioner now refers to a "false" deed of delivery respecting the estate of Thomas Bata introduced in evidence during the prior litigation. (73-103)
September 21, 1964	In conjunction with his new answer petitioner files a motion to require respondent to produce "other" copies of the deed of delivery. (104-106)
October 5, 1964	Respondent answers petitioner's motion to produce pointing out that the documents sought to be "discovered" by petitioner have in fact been in his possession for a number of years and were either exhibits themselves or were referred to in exhibits during the prior litigation. (107-113)
October 7, 1964	A hearing on petitioner's motion to produce is held before Judge Alessandroni. (2) Subsequently, during October and November, the parties file a number of thorough briefs regarding the motion:

Defendant Jan A. Bata's Memorandum In Support of the Rule for the Production of Documents, Plaintiff's Answering Memorandum in Opposition to Defendant Jan A. Bata's Motion to Produce, Defendant Jan A. Bata's Memorandum in Reply.

October 13, 1964

Respondent files an extensive reply to petitioner's second answer setting forth the incontestable documentary material upon which respondent's case is based. (118-588) By his reply respondent calls for petitioner to admit as a matter of record:

—The prior final judgments of the New York, Delaware and Swiss courts in respondent's favor. (134-135, 154)

—Petitioner's unsuccessful attempts to attack these decisions prior to the settlement. (135, 154-160)

—The two months of negotiations leading up to the settlement. (135-138)

—The actions taken and documents signed by the parties constituting the settlement. (138-143, 196-553)

—Respondent's subsequent performance of his obligations under the settlement and petitioner's refusal to perform. (143-153)

—Petitioner's ratification of the settlement on June 13, 1963 by his delivery of shares and receipt of an additional $200,000 under it. (151)

—Specific facts regarding the February 1942 document, the allegedly "false" deed of delivery and petitioner's other allegations of "fraud" and "duress". (153-154, 160-165)

November 23, 1964 — Petitioner files a counter-reply admitting the material set forth in respondent's reply but repeating his general allegations of "fraud", "duress" and "lack of consideration". (589-609)

December 24, 1964 — In the light of petitioner's admission of the material contained in respondent's reply, respondent moves for judgment on the pleadings. (659-683)

January 6, 1965 — Judge Alessandroni denies petitioner's motion for the production of documents stating, "... we must conclude that [petitioner] has had the documents in his possession for many years and that

	this motion is merely another tactic solely for the purpose of delay." (684-685)
February 10, 1965	Oral argument, continued earlier at the request of counsel for petitioner, is now held on respondent's motion for judgment on the pleadings.
February and March, 1965	The parties submit extensive briefs addressed to the adequacy of petitioner's allegations of "fraud", "duress" and "lack of consideration" to excuse his refusal to perform his remaining obligations under the settlement: Brief of Defendant Jan A. Bata in Opposition to the Motion of Plaintiff for Judgment on the Pleadings Presented Upon Oral Argument February 10, 1965. (29 pages)
	Memorandum in Support of Plaintiff's Motion for Judgment on the Pleadings. (53 pages)
	Brief of Defendant in Answer to Plaintiff's Memorandum. (46 pages)
	Reply Memorandum in Support of Plaintiff's Motion for Judgment. (9 pages)
	Brief of Defendant in Counter-Reply to Plaintiff's Reply Memorandum. (10 pages)

July 28, 1965	Although respondent's motion for judgment on the pleadings has been *sub judice* for more than four months, petitioner now moves to amend his pleadings. He proposes to file a new answer (his Third in the action) once again alleging "fraud", but this time, having failed to impress the court with the February 1942 document and the allegedly "false" deed of delivery, he shifts to other documents from the Czech estate files purportedly "newly discovered." (686-796)
August 3, 1965	Respondent answers petitioner's motion to amend pointing out that amendment at this stage is unjustified not only because the pleadings were closed months before by respondent's filing of his motion for judgment, but also the allegedly "new" documents which petitioner has proffered have been known to him for years, and a large number of similar documents were submitted in evidence by him during the prior litigation. (798-814)
August 3, 1965	A hearing is held before Judge Alessandroni at which both parties submit briefs on the significance of the "new" documents: Memorandum in Support of De-

	fendant Jan A. Bata's Motion for Leave to Amend His Answer. Memorandum in Opposition to Defendant Jan A. Bata's Motion to Amend His Pleadings.
August 4, 1965	Judge Alessandroni denies petitioner leave to amend his prior pleadings on the basis of the items which he now proffers. (816)
September 9, 1965	"Upon consideration of all the pleadings and after having heard extensive argument", Judge Alessandroni grants respondent's motion for judgment on the pleadings. (817)
September 13, 1965	Despite the granting of judgment petitioner files a new motion to amend his prior pleadings in the action (a proposed Fourth Answer) and simultaneously moves for a stay. This time petitioner has another "newly discovered" document—a July 12, 1932 protocol. (819-827) He also alleges, for the first time, that respondent has broken the settlement agreement by manufacturing shoes competitive with petitioner's in Brazil.
September 20, 1965	In answer to petitioner's further motion to amend, respondent points out that this latest "newly discovered" document

proffered by petitioner—the July 12, 1932 protocol—was referred to extensively in the prior litigation and represents simply another attempt to delay the final outcome of the lawsuit. Regarding his own alleged breach of the settlement agreement, respondent points out that not only are petitioner's averments untrue but also, after the granting of judgment, they come too late. If petitioner had such a claim, it would have to be asserted in a separate lawsuit. (832-839)

September 21, 1965 Petitioner's counsel writes to respondent's counsel giving notice of the taking of respondent's deposition in spite of the outstanding protective order. When respondent's counsel refuses to comply, a petition is filed asking the court to rescind its prior order and permit the depositions. (843)

September 28, 1965 A hearing is held before Judge Alessandroni regarding both petitioner's motion to amend and his petition to permit the taking of respondent's deposition. Again substantial memoranda and affidavits are before the court. (819-827, 832-839, 843-863)

October 18, 1965	After consideration of the materials submitted by the parties, Judge Alessandroni denies all of petitioner's motions—the motion to amend, the motion to take respondent's deposition after judgment and the motion for a stay—and enters a final decree in the case, ordering that the remaining portions of the settlement agreement be fully carried out. (871-875)
November 15, 1966	Upon appeal by petitioner the Pennsylvania Supreme Court unanimously affirms the final decree of Judge Alessandroni. (1226)
December 6, 1966	The Pennsylvania Supreme Court denies petitioner's petition for reargument. (1242)